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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MCI Opposition to Joint Petition of Qwest, BellSouth, and SBC for Expedited Forbearance, WC Docket No. 03-189

Dear Ms. Dortch:

The “me too” forbearance petition filed by Qwest, BellSouth, and SBC (“Joint Petition”)¹ should be rejected for the same reasons that the identical Verizon forbearance petition² should be rejected. Just like the Verizon petition, the Joint Petition asks the FCC to replace TELRIC rates with resale rates on UNE-P lines and to prohibit UNE-P carriers from collecting access charges. Just like the Verizon petition, the Joint Petition should be rejected on procedural and substantive grounds for the reasons set forth in MCI’s opposition and reply to the Verizon Forbearance petition, incorporated by reference and attached hereto. The same arguments we made with respect to the Verizon petition apply equally here.

In sum, the BOCs’ petitions are not actually forbearance petitions but rather are a request for the Commission to change its current rules by substituting resale for TELRIC and prohibiting competitors from using UNE-P to provide access services. The merits of such requests require a notice and comment rulemaking. Last week the Commission began just such a rulemaking by adopting a Notice of Proposed Rulemaking on TELRIC.³ This rulemaking, in contrast to the BOCs’ forbearance petitions, will provide parties a full and fair opportunity to comment in a comprehensive way on the application of TELRIC to all UNEs. The Commission therefore

¹ Joint Petition of Qwest Corporation, BellSouth Telecommunications, Inc., and SBC Communications Inc. for Expedited Forbearance, *In the Matter of Joint Petition for Forbearance from the Current Pricing Rules for the unbundled Network Element Platform*, WC Docket No. 03-189, filed July 31, 2003.

² Petition for Expedited Forbearance of the Verizon Telephone Companies, WC Docket No. 03-157, filed July 3, 2003.

³ Review of the Commission’s Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, Notice of Proposed Rulemaking, WC Docket No. 03-173 (TELRIC Notice) rel. Sept. 15, 2003.

should immediately reject the BOCs' petitions and proceed with its comprehensive TELRIC review in the pending rulemaking.

The BOCs' forbearance petitions fail to meet the prerequisites for forbearance under section 10 of the Act. Section 10(a) provides that enforcement from a regulation is appropriate only when the regulation is unnecessary to ensure charges are just and reasonable, when the regulation is unnecessary to protect consumers, and when forbearance would be consistent with the public interest. A forward-looking costing methodology is necessary to ensure just and non-discriminatory rates, because under an alternative methodology such as resale, competitors would have to pay far more than incumbents for access to facilities. UNE-P priced at TELRIC is also necessary to protect consumers and the public interest.⁴ Nor do the BOCs meet the requirements of section 10(d), which prohibits the Commission from forbearing from sections 251(c) or 271 until those sections have been fully implemented. The requirements of section 251 cannot be said to have been fully implemented until the BOCs are no longer dominant in the local market in their region, and the BOCs' obligation to continue to comply with section 271 continues post-approval, not simply when a BOC has obtained long-distance authority.

The BOCs' policy arguments are equally wrong-headed and have been rejected by the Commission in the Triennial Review Order. There the Commission concluded as a general matter that the BOCs' policy arguments against UNE-P (e.g., it negatively affects BOC profits, decreases incentives to invest, etc.) failed to warrant elimination of UNE-P. The Commission also upheld TELRIC as the appropriate methodology for pricing unbundled elements.⁵ Furthermore the Commission again reaffirmed its commitment to forward-looking costing principles in the recent TELRIC Notice.⁶ Because resale pricing as the BOCs request is not a cost-based methodology, the Commission cannot apply this standard to UNE-P consistent with the Act's cost-based pricing provisions.

The Triennial Review Order also addresses the BOCs' assertion that UNE-P CLECs should not be able to self-provide exchange access service but instead should be forced to pay access charges to the incumbent. There the Commission reemphasized the importance of permitting CLECs to use UNEs to provide exchange access services.⁷ The Commission concluded that access services are qualifying services that can be used to justify unbundling, that competition in access services using UNEs is necessary to open the monopoly bottleneck control, and that incumbents could engage in a price squeeze if UNE-P CLECs were forced to pay incumbents access charges, because substantial intrastate support flows remain.⁸

Finally, it bears mentioning that all of the non-BOC commenters to the Verizon petition - state commissions, consumer groups, and competitive carriers - have expressed strong opposition to such a forbearance petition. These parties have correctly argued that Verizon's petition should be rejected because it is inconsistent with the Act, Commission precedent, and sound public

⁴ MCI Opposition to Verizon Forbearance Petition at 14, n.21, citing Ordoover Report, attached to WorldCom Reply Comments in CC Docket No. 01-333 at 10.

⁵ Triennial Review Order, ¶ 102.

⁶ TELRIC Notice ¶ 29.

⁷ Triennial Review Order, ¶¶ 139, 140, 161.

⁸ Triennial Review Order ¶161.

policy, and fundamentally is not a request for forbearance but a request for rulemaking. In short, the BOCs' petitions lack support from anyone but themselves and are unfounded as a procedural, policy, and legal matter. For these reasons and those described in the attached pleadings, the Commission should promptly reject the Joint Petition.

Sincerely,

/s/

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